tiff has substantive grounds for relief. Being an extreme remedy it should be granted against a solvent private corporation only as a last resort. *Merrifield* v. *Burrows*, 153 Ill. App. 523. It should appear that more restricted remedies are unavailable or inadequate. *Roman* v. *Woolfolk*, 98 Ala. 219, 13 So. 212; *Kahan* v. *Alaska Junk Co.*, 111 Wash. 39, 189 Pac. 262. A receivership has been denied where the offending officers were solvent and could be brought to an accounting. *Hayes* v. *Jasper Land Co.*, 147 Ala. 340, 41 So. 909. But an accounting covers only past delinquencies, so that where a continuous diversion of assets cannot be checked by injunction, and the offending officers cannot be removed, a temporary receiver may well be appointed. *Boothe* v. *Summit Mining Co.*, 55 Wash. 167, 104 Pac. 207. The matter is within the discretion of the court, with the burden on the plaintiff to overcome the strong objections to the remedy. In the principal case the hardship and impossibility of other relief justify the appointment.

DAMAGES — CONTRACTS. — In 1916 the defendant contracted to build a house for the plaintiff, to be completed within six months. The plaintiff reserved the right to complete the house himself if the defendant did not properly proceed with the work. After work was begun, the government prohibited all building except such as had already been commenced, which was permitted to continue on application for a license. The defendant intentionally delayed the work to insure a refusal of the license. It was refused and the plaintiff brought this action for breach of contract. It was impossible to continue building until 1919, when the plaintiff did so at a greatly increased cost. *Held*, that the plaintiff recover this increased cost, less the contract price. *Mertens* v. *Home Freeholds Co.*, [1921] 2 K. B. 526 (C. A.).

The court unconsciously departs from the rule allowing only such damages for breach of a contract as the parties may fairly be supposed to have contemplated when they made the contract. *Hadley* v. *Baxendale*, 9 Ex. 341; *Bradley* v. *Chicago, etc. Ry. Co.*, 94 Wis. 44, 68 N. W. 410. See *Griffin* v. *Colver*, 16 N. Y. 489, 494–495. See 1 SEDGWICK, DAMAGES, 9 ed., §§ 144–147a. The parties here contemplated that if the plaintiff should avail himself of his right to build, and to hold the defendant for the increased cost, this right would be exercised at the time set for the defendant's performance. That it would become impossible to proceed was clearly not foreseen. Even though the defendant knowingly caused this impossibility, to hold him for more than the cost of building the house in 1916, less the contract price, is to subject him to more damages than were contemplated at the time the contract was made. Damages in actions *ex contractu* differ from those in actions *ex delicto*. The former are based on consensual transactions and the liability of the parties is limited by the extent of the obligations they have undertaken. Actions *ex delicto* do not depend on consensual transactions. The defendant's liability is therefore not limited, but extends to all the damages he has proximately caused. *Shedd* v. *Calumet Construction Co.*, 270 Fed. 942 (7th Circ.).

DEEDS — CONSTRUCTION — LAND "DIVIDED BETWEEN" A AND HIS HEIRS. — A deed provided that land should "revert to and be divided between" A and his heirs. *Held*, that A took a half-interest, and his children a half-interest, as tenants in common. *Shugart* v. *Shugart*, 233 S. W. 303 (Tex. App.).

It is clear that the deed, correctly construed, creates a tenancy in common. To conceive of "dividing" land as separating a fee in that land into life estate and remainder, seems beyond reason. The cases confirm this view, uniformly treating the parts of a "divided" estate as contemporaneous. *Griswold* v. *Johnson*, 5 Conn. 363; *Herring* v. *Rogers*, 30 Ga. 615; *Stanwood* v. *Stanwood*, 179 Mass. 223, 60 N. E. 584; *Pruden* v. *Paxton*, 79 N. C. 446.

See *Layton* v. *State*, 4 Harr. (Del.) 8, 37. See also *Brasington* v. *Hanson*, 149 Pa. St. 289, 24 Atl. 344. As there can by no possibility be a freehold plus a remainder, the Rule in Shelley's Case can have no application. But the court, sublimely oblivious to this, wasted its time considering the Rule, and reached the obviously correct result by construing "heirs" as "children," a word of purchase. *Cf. Seymour* v. *Bowles*, 172 Ill. 521, 50 N. E. 122; *Tinder* v. *Tinder*, 131 Ind. 381, 30 N. E. 1077; *Eckle* v. *Ryland*, 256 Mo. 424, 165 S. W. 1035; *Wood* v. *Taylor*, 9 Misc. 640, 30 N. Y. Supp. 433; *Brasington* v. *Hanson*, *supra*. The court's language is as loose as its reasoning. A court cannot now be excused for saying that "the manifest intention of the grantor will control the rule in Shelley's Case, if in conflict with it." Once given a chance to operate, the Rule ruthlessly defeats intent. *Wilson* v. *Harrold*, 288 Ill. 388, 123 N. E. 563; *Kirby* v. *Broaddus*, 94 Kan. 48, 145 Pac. 875; *Van Grutten* v. *Foxwell*, [1897] A. C. 658. See *Sellers* v. *Rike*, 292 Ill. 468, 127 N. E. 24. See Joseph Warren, "Progress of the Law — Estates," 34 HARV. L. REV. 508, 519; 1 TIFFANY, REAL PROPERTY, 2 ed., § 151; 11 HARV. L. REV. 418; 12 HARV. L. REV. 64. It is only where the grantor effectuates his intent by giving the remainder to purchasers, thus keeping the case from the beginning out of the Rule's path, that the Rule does not apply. *Ætna Life Ins. Co.* v. *Hoppin*, 249 Ill. 406, 94 N. E. 669; *Harris* v. *Brown*, 184 Iowa, 1288, 169 N. W. 664; *Moherman* v. *Anthony*, 106 Kan. 457, 188 Pac. 434; *Hopkins* v. *Hopkins*, 103 Tex. 15, 122 S. W. 15.

DOWER — INCHOATE RIGHT OF DOWER — RIGHT OF WIFE OF ONE ENTITLED TO LAND BY CONSTRUCTIVE TRUST. — A made a gratuitous conveyance of lands to B upon an oral agreement that B would return them when requested. Thereafter A met and married the complainant. A then demanded the lands of B, who refused to deed them back, but did convey a life estate. The complainant sued B to establish her inchoate right of dower in the lands. The defendant demurred. *Held*, that the demurrer be overruled. *Melenky* v. *Melen*, 189 N. Y. Supp. 798 (Sup. Ct.).

Too frequently when an equity court sees a desirable result but does not quite see how to reach it, it mumbles something about "fraud" and then decrees according to its conscience. The practice is never justified. Can the result thereby reached in the principal case be upheld? A could have forced the defendant to convey to him upon a theory of constructive trust. *Medical College Lab.* v. *N. Y. University*, 178 N. Y. 153, 70 N. E. 467. See 21 BENCH AND BAR (N. S.) 61; George P. Costigan, "Trust Based on Oral Promises," 12 MICH. L. REV. 427, 527. This, however, did not give him an equitable estate in which the complainant might have asserted a right of dower. See *Jeremiah* v. *Pitcher*, 26 App. Div. 402, aff'd. 163 N. Y. 574, 57 N. E. 1113. See Roscoe Pound, "Progress of the Law — Equity," 33 HARV. L. REV. 420–423. But she was possessed of a beneficial expectancy as regards the land, in the possibility that A might call for the legal title, whereupon her inchoate right of dower would at once attach. See *Sutherland* v. *Sutherland*, 69 Ill. 481. See 4 KENT, COMMENTARIES, 50. The defendant willfully and without justification interfered with this valuable chance. If the case is to be supported at all, it must be on the ground that this conduct, though consisting in non-action, was tortious. If so, the injury to the complainant's expectancy was actionable. *Rice* v. *Manley*, 66 N. Y. 82; *Concordia Fire Ins. Co.* v. *Simmons Co.*, 167 Wis. 541, 168 N. W. 199. See *Lewis* v. *Corbin*, 195 Mass. 520, 526, 81 N. E. 248, 250. Legal damages would be inadequate. Equity, therefore, may well give specific reparation by decreeing to the wife an interest in the land equivalent to an inchoate right of dower in it as a legal estate. See 20 HARV. L. REV. 403.